



June 14, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-2520

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148423.

The Texas Department of Criminal Justice (the "department") received a request for "all files and paper work pertaining [sic] to a red folder on [the requestor]." You inform us that you have released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.131 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Initially, we note that social security numbers and other personal information relating to the requestor and a former employee of the department are redacted from the submitted records that you released. The requestor has a special right of access to his own social security number under section 552.023 of the Government Code.¹ Personal information relating to a former employee of the department *may* be excepted from public disclosure under section 552.117(1), *but only if the former employee made a proper request under section 552.024 to keep the information confidential. See* Open Records Decision Nos. 622 (1994), 455 (1987). A social security number also may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number was obtained or is maintained*

¹Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

*by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.*² See ORD 622 at 2-4. It is not apparent to this office that the former employee's social security number is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the department to obtain or maintain this social security number. Therefore, we have no basis for concluding that this social security number was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, prior to releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

You claim that the rest of the requested records are excepted from disclosure under section 552.131 of the Government Code. Section 552.131 relates to inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.131(a). Section 552.029 of the Government Code provides in relevant part that, "[n]otwithstanding . . . Section 552.131," eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [TDCJ] are] subject to required disclosure." These categories of information include "basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate." Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.131 subject to section 552.029.

We find that the records at issue constitute information about an inmate confined in a facility operated by or under a contract with the department. The records are therefore subject to section 552.131(a). You acknowledge that these records relate to an incident involving the use of force. Furthermore, the submitted records refer to an alleged assault by an inmate on an employee of the department. Thus, we find that these records also relate to "an alleged crime involving the inmate." Accordingly, we conclude that section 552.029(8) requires the disclosure of basic information about both of these aspects of the incident in question. The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The information that is not subject to release under section 552.029 is excepted from disclosure under section 552.131. As we are able to make this determination, we need not address your arguments under sections 552.101, 552.107(2), and 552.108.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

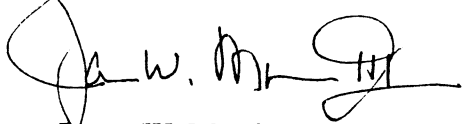
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

³We note that the Texas Board of Criminal Justice has determined that information that is subject to disclosure under section 552.029 of the Government Code does not constitute "sensitive information" under *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115, *amended in part and vacated in part, reh'g denied*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. W. Morris, III', with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 148423

Enc: Submitted documents

c: Mr. Jimmy Holland
2805 Smith
Orange, Texas 77630
(w/o enclosures)